

Remarks

This Application has been carefully reviewed in light of the Final Office Action mailed April 15, 2008. Although Applicant believes all claims are allowable without amendment, to advance prosecution Applicant has made clarifying amendments to independent Claims 1, 13, and 25. At least certain of these amendments are not considered narrowing or necessary for patentability. Applicant respectfully requests reconsideration and allowance of all pending claims.

I. Claims 1, 13, and 25 and Their Dependent Claims are Allowable over Dunham

The Examiner rejects Claims 1-3, 6, 13-15, 18, 25, and 27 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,269,431 to Dunham (“Dunham”). Applicant respectfully disagrees and discusses independent Claim 1 as an example.

“A claim is anticipated only if *each and every element as set forth in the claim* is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added); M.P.E.P. ch. 2131. In addition, “[t]he identical invention must be shown in *as complete detail as contained in the . . . claim.*” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (emphasis added); *see also* M.P.E.P. ch. 2131. Furthermore, “[t]he elements must be arranged *as in the claim* under review.” *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990) (emphasis added); M.P.E.P. ch. 2131. As illustrated below, *Dunham* does not appear to disclose, either expressly or inherently, each and every limitation recited in Claim 1, as is required under the M.P.E.P. and governing Federal Circuit cases.

At a minimum, the cited portions of *Dunham* fail to disclose, teach, or suggest the following limitations recited in Claim 1, as amended:

the backup storage system operable to:
obtain a static view of a relevant portion of the storage system;
map one or more blocks of data comprising the information being backed up to corresponding files; and

back up the information by transferring the information being backed up using one or more data movers operable to transfer the information being backed up directly from the storage system to the backup storage system, *using one or more extended copy commands*, without going through the one or more servers; and

restore the information by transferring the information being restored using one or more data movers operable to transfer the information being restored directly from the backup storage system to the storage system, *using one or more extended copy commands*, without going through the one or more servers.

As allegedly disclosing the limitations recited in Claim 1 prior to the amendments presented in this Response, the Examiner cites various portions of *Dunham*. (Final Office Action at 4-6) For example, the Examiner apparently equates the primary data storage subsystem disclosed in *Dunham* with the storage system recited in Claim 1, and equates the secondary data storage subsystem disclosed in *Dunham* with the backup storage system recited in Claim 1. Even assuming for the sake of argument that these equations are proper, it does not appear that the cited portions of *Dunham* disclose, teach, or suggest these limitations.

For example, it does not appear that the cited portions of *Dunham* disclose, teach, or suggest a backup storage system that is operable to obtain a static view of a relevant portion of the storage system, map one or more blocks of data comprising the information being backed up to corresponding files, and back up the information in the manner recited in Claim 1. As another example, it does not appear that the cited portions of *Dunham* disclose, teach, or suggest “*back[ing] up the information by transferring the information being backed up using one or more data movers operable to transfer the information* being backed up directly from the storage system to the backup storage system, *using one or more extended copy commands*, without going through the one or more servers,” as recited in Claim 1 as amended. As another example, it does not appear that the cited portions of *Dunham* disclose, teach, or suggest “*restor[ing] the information by transferring the information being restored using one or more data movers operable to transfer the information* being restored directly from the backup storage system to the storage system, *using one or more extended copy commands*, without going through the one or more servers,” as recited in Claim 1 as

amended.

For at least these reasons, Applicant respectfully submits that the Examiner has not demonstrated that *Dunham* discloses, teaches, or suggests each and every limitation recited in independent Claim 1, as amended.

Independent Claims 13 and 25 recite certain limitations analogous to those recited in Claim 1 and discussed above. Thus, for at least certain analogous reasons, Applicant respectfully submits that the Examiner has not demonstrated that *Dunham* discloses, teaches, or suggests each and every limitation recited in independent Claims 13 and 25.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 1 and its dependent claims. For at least certain analogous reasons, Applicant respectfully request reconsideration and allowance of independent Claims 13 and 25 and their dependent claims.

II. Claim 34 is Allowable over *Spilo*

The Examiner rejects Claim 34 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,208,999 to Spilo, et al. ("*Spilo*"). Applicant respectfully disagrees.

Applicant reiterates the above-discussed legal standard that must be satisfied for a finding of anticipation. As illustrated below, *Spilo* does not appear to disclose, either expressly or inherently, each and every limitation recited in Claim 34, as is required under the M.P.E.P. and governing Federal Circuit cases.

Independent Claim 34 recites:

- A serverless backup method comprising:
 - opening a file system root directory;
 - parsing the file system root directory for allocation tables of each file and finding attributes of each file;
 - examining the attributes of each file and determining whether a file is resident or non resident;
 - backing up entire attributes of a file if it is determined that the file is resident; and

backing up attributes and data blocks belonging to the file if it is determined that the file is non resident.

Applicant respectfully submits that *Spilo* does not appear to disclose, teach, or suggest each and every limitation recited in Claim 34.

At the outset, Applicant notes that he does not necessarily agree with or acquiesce to the Examiner's interpretation of the terms "resident" and "non resident." (See Final Office Action 16-17) Applicant respectfully submits that those terms should be given their broadest reasonable interpretation according to applicable case law.

For example, Applicant respectfully submits that the cited portions of *Spilo* fail to disclose, teach, or suggest "determining whether a file is resident or non resident" and "backing up entire attributes of a file *if it is determined that the file is resident*," as recited in Claim 34. As allegedly disclosing "determining whether a file is resident or non resident," as recited in Claim 34, the Examiner references *Spilo*'s disclosure that "the disk can be scanned to find missing files" and that "a flag in the directory entry and in each data block is set to indicate that the file is on longer present." (See Final Office Action at 3, 17) As allegedly disclosing these limitations, the Examiner cites *Spilo*, 4:66-5:11, emphasizing the following particular language: (1) "[T]he disk can be scanned to find missing files;" and (2) "File allocation information can by dynamically maintained and can be reconstructed in cases of loss or damage by scanning the disk for blocks having identification and sequence numbers." (Final Office Action at 3)

First, the disclosure that "file allocation information can by dynamically maintained and can be reconstructed in cases of loss or damage by scanning the disk for blocks having identification and sequence numbers" does not appear to disclose, teach, or suggest "backing up entire attributes of a file if it is determined that the file is resident," as recited in Claim 34. There simply does not appear to be a back up of entire attributes of a file based on a determination that a file is resident in the cited portion of *Spilo*.

Second, even in light of the Examiner's responses to Applicants' arguments from the

Previous Response (*see* Final Office Action at 18) and even assuming for the sake of argument only that the disclosure in *Spilo* of “the disk can be scanned to find missing files” can be equated with the recitation of “determining whether a file is resident or non resident,” as recited in Claim 34 (which Applicant does not concede), Applicant maintains that it is unclear how this determination impacts the portion of *Spilo* that the Examiner cites as allegedly disclosing “backing up entire attributes of a file *if it is determined that the file is resident*,” as recited in Claim 34. For example, *how does any determination made by scanning to find missing files affect the file allocation information being dynamically maintained and being reconstructed in cases of loss or damage?* Applicant’s claim recites that a determination is made “whether a file is resident or non resident” and entire attributes of a file are backed up “*if it is determined that the file is resident*,” as recited in Claim 34. It does not appear that the cited portion of *Spilo* discloses, teaches, or suggests these limitations.

For this limitation, the Examiner now seems to shift what the Examiner is attempting to equate with the determination of whether a file is resident or non resident. (Final Office Action at 18-19) In particular, the Examiner appears to reference a discussion about disk drive 18 and whether a file has been created. Applicant respectfully submits that it is inconsistent for the Examiner to equate a first disclosure with the limitation “determining whether a file is resident or non resident,” and then to cite a second unrelated disclosure as allegedly disclosing the limitations “backing up entire attributes of a file *if it is determined that the file is resident*,” as recited in Claim 34. In other words, the very same determination the Examiner is applying against “*determining whether a file is resident or non resident*” must be the basis for the alleged disclosure of “backing up entire attributes of a file *if it is determined that the file is resident*,” as recited in Claim 34.

As another example, Applicant respectfully submits that the cited portions of *Spilo* fail to disclose, teach, or suggest “determining whether a file is resident or non-resident” and “backing up attributes and data blocks belonging to the file if it is determined that the file is non resident,” as recited in Claim 34. Again, Applicant notes that the Examiner’s response to Applicant’s arguments from the previous Response appears to raise the same inconsistency discussed with respect to the limitation “backing up entire attributes of a file *if it is*

determined that the file is resident,” as recited in Claim 34. In particular, Applicant respectfully submits that the very same determination the Examiner is applying against “*determining whether a file is resident or non resident*” must be the basis for the alleged disclosure of “backing up attributes and data blocks belonging to the file if it is determined that the file is non resident,” as recited in Claim 34.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 34.

III. The Separately-Rejected Dependent Claims are Allowable over the Proposed Combinations

The Examiner rejects Claims 4-5, 16-17, and 26 under 35 U.S.C. § 103(a) as being unpatentable over *Dunham* in view of U.S. Patent 6,728,848 to Tamura (“*Tamura*”). The Examiner rejects Claims 7, 19, and 28 under 35 U.S.C. § 103(a) as being unpatentable over *Dunham* in view of U.S. Patent 6,081,875 to Clifton, et al. (“*Clifton*”). The Examiner rejects Claims 8-9, 20-21, and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over *Dunham* and *Clifton* in view of U.S. Patent 6,785,786 to Gold, et al. (“*Gold*”). The Examiner rejects Claims 10-12, 22-24, and 31-33 under 35 U.S.C. § 103(a) as being unpatentable over *Dunham* and *Clifton* in view of U.S. Patent 6,738,923 to Blam et al. (“*Blam*”).

At the outset, Applicant notes that there appears to be an inconsistency in the rejection of Claims 10-12, 22-24, and 31-33. The introductory paragraph identifies the rejection that is based on the proposed *Dunham-Clifton-Blam* combination as being of Claims 8-9, 20-21, and 29-30 rather than Claims 10-12, 22-24, and 31-33. (Final Office Action at 15) However, the substance of the rejection refers to Claims 10-12, 22-24, and 31-33. If the Examiner intends to maintain the rejection of these claims, Applicant respectfully submits that the Examiner should issue a new Office Action clarifying the rejection of these claims.

In any event, dependent Claims 4-5 and 7-12 (which depend from independent Claim 1), dependent Claims 16-17 and 19-24 (which depend from independent Claim 13), and dependent Claims 26 and 28-33 (which depend from independent Claim 25) depend from independent Claims 1, 13, and 25, which Applicant has shown above to be allowable over the

Dunham. The Examiner does not allege that the references cited to reject dependent Claims 4-5, 7-12, 16-17, 19-24, 26, and 28-33 make up for the above-discussed deficiencies of the *Dunham*. Thus, dependent Claims 4-5, 7-12, 16-17, 19-24, 26, and 28-33 are allowable at least because they depend from allowable independent claims. Additionally, depend Claims 4-5, 7-12, 16-17, 19-24, 26, and 28-33 recite further patentable distinctions over the various references cited by the Examiner. To avoid burdening the record and in view of the clear allowability of independent Claims 1, 13, and 25, Applicant does not specifically discuss these distinctions in this Response. However, Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Moreover, Applicant does not admit that the proposed combinations of references are possible or that the Examiner has provided an adequate reason for combining or modifying the references.

For at least these reasons, Applicants respectfully request reconsideration and allowance of dependent Claims 4-5, 7-12, 16-17, 19-24, 26, and 28-33.

V No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.

Conclusion

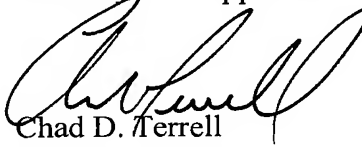
Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicant, at the Examiner's convenience at (214) 953-6813.

As indicated on the accompanying RCE Transmittal form, the Commissioner is hereby authorized to charge the amount of \$810.00 to Deposit Account No. 02-0384 of Baker Botts L.L.P. to cover the cost of the RCE fee. Additionally, as indicated on the accompanying Request for Extension of Time, the Commissioner is hereby authorized to charge the amount of \$1110.00 to Deposit Account No. 02-0384 of Baker Botts L.L.P. to cover the fee for a three-month extension of time. Although Applicant believes no other fees are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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